

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CEDRIC PUGH, (AIS# 182373),

*

Plaintiff,

*

V.

*

2:06-CV-363-MEF

ALABAMA CORRECTIONAL INDUSTRIES
COMMISSIONER BUTCH CALLOWAY, et al.

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Defendants.

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**RESPONSE TO SHOW CAUSE ORDER AND MOTION TO QUASH
AND/OR TO DISMISS OR, IN THE ALTERNATIVE, FOR AN
EXTENSION OF TIME IN WHICH TO FILE WRITTEN REPORT**

COME NOW Defendant Julio E. Rios, M.D., in response to this Honorable Court's Show Cause Order dated June 29, 2006, and in response to the Plaintiff's Complaint herein, and shows unto the Court as follows:

1. The reason that Dr. Rios has not filed a written report in compliance with the Court's Order entered April 27, 2006, is that Dr. Rios has never been served with the Summons and Complaint, any Court Order, or any other document whatsoever relative to this case. (See Affidavit of Dr. Rios, attached hereto as Exhibit "A"). Although the Court's file indicates that Dr. Rios was served via certified mail at the post office box for Baptist Medical Center South in Montgomery, and that said documents were received by an "R. Thomas" as an "agent," Dr. Rios has no knowledge of any such individual and was never provided copies of any of the documents purportedly served via the Baptist address (Id.) Dr. Rios provides emergency medical services in the emergency department

at Baptist Medical Center South pursuant to a contract, but is not an agent, servant, or employee of Baptist Medical Center, and does not receive mail via the Baptist Medical Center post office box at which Plaintiff attempted to serve him in this case (Id.)

2. Dr. Rios had no notice or knowledge whatsoever of the present lawsuit until on or after July 6, 2006, when undersigned counsel provided courtesy notification to his office (Id.) Undersigned counsel has now been retained to represent Dr. Rios in this matter.

3. In light of the foregoing, Dr. Rios moves this Honorable Court to quash service upon him, and to dismiss him as a Defendant to this action, on the grounds that the Plaintiff has failed to properly effect service of process on him in compliance with the Federal Rules of Civil Procedure. The Plaintiff's failure to properly effect service on Dr. Rios voids personal and subject matter jurisdiction, and Dr. Rios therefore asserts lack of jurisdiction as a defense herein as well.

4. In the alternative to dismissal, Dr. Rios would respectfully request that the Court grant him a thirty day extension of time, up to and including August 16, 2006, for filing an Answer and Written Report in this action. Such an extension would in no way prejudice the Plaintiff and would, rather, prevent undue prejudice to Dr. Rios, who just became aware of this action and will need to have sufficient time to obtain the records of his treatment of the Plaintiff from Baptist Medical Center South, to review this matter with his counsel, and to prepare and file an informative Written Report with the Court.

WHEREFORE, Julio E. Rios, M.D., respectfully request that this Honorable Court enter an Order quashing service on him and dismissing him as a Defendant to this action, or, in the alternative, that the Court enter an Order providing him an additional

thirty days, up to and including August 16, 2006, for filing an Answer and Written Report herein.

Respectfully submitted,

s/L. Peyton Chapman, III
Alabama State Bar Number CHA060
s/R. Brett Garrett
Alabama State Bar Number GAR085
Attorney for Julie E. Rios, M.D.
RUSHTON, STAKELY,
JOHNSTON & GARRETT, P.A.
Post Office Box 270
Montgomery, Alabama 36101-0270
Telephone: (334) 206-3225
Fax: (334) 481-0803
Email: lpc@rsjg.com

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

J. Matt Bledsoe, Esq.
Office of the Attorney General
11 South Union Street
Montgomery, Alabama 36130

E. Ham Wilson, Jr., Esq.
Ball, Ball, Matthews & Novak, P.A.
P.O. Box 2148
Montgomery, Alabama 36102-2148

And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Cedric Pugh (AIS# 182373)
Elmore Correctional Facility
P.O. Box 8
Elmore, AL 36025

s/L. Peyton Chapman, III

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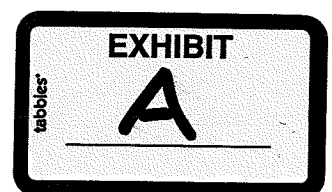
AFFIDVAIT OF JULIO E. RIOS, M.D.

BEFORE ME, Kathryn B. Kitchens, a notary public in and for said

County and State, personally appeared **JULIO E. RIOS, M.D.**, and being duly sworn,
deposed and says on oath that the averments contained in the foregoing are true to the
best of his ability, information, knowledge and belief, as follows:

“My name is Julio E. Rios. I am personally familiar with all of the facts set forth
I this affidavit. I am a licensed medical doctor specializing in emergency medicine. I
provide emergency medical services at Baptist Medical Center South in Montgomery,
Alabama, pursuant to a contract, but am not an agent, servant, or employee of Baptist
Medical Center South.

I do not receive mail at Baptist Medical Center South’s post office box number
241145. I do not know any person named R. Thomas, and there is no person named R.
Thomas who is authorized to act as an agent, servant, or employee on my behalf. It is my
understanding that R. Thomas has signed certified mail receipts for mail addressed to me
at the above-referenced Baptist Medical Center South post office box containing



documentation regarding the above-referenced lawsuit filed by Cedric Pugh. I have never, however, been provided with the mail purportedly received by R. Thomas at the Baptist post office box regarding this case.

The first notice I have received regarding this litigation was when the law firm of Rushton, Stakely, Johnston and Garrett provided courtesy notification to my office on or about July 6, 2006, after which I was informed that I was being sued by Cedric Pugh. Prior to that time, I had no knowledge whatsoever that Mr. Pugh had filed a lawsuit against me, nor did I have any knowledge or notice whatsoever of the above-referenced litigation or any orders entered by the Court in this matter.”

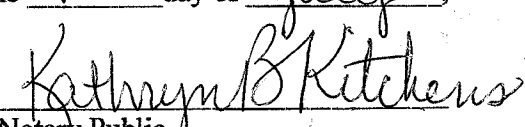
Further affiant sayeth not.



JULIO E. RIOS, M.D.

STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

Sworn to and subscribed before me on this the
2006.

13th day of July,


Notary Public
My Commission Expires
Oct. 04, 2006